

NTSB Order No. EA-4344

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of March, 1995

Respondent.

OPINION AND ORDER

¹ Attached is an excerpt from the hearing transcript containing the oral initial decision.

had violated 14 C.F.R. 43.16, but not section 43.13(a),² when he failed to detect three pieces of tape which were covering the static ports and equipment blower port of a Boeing 727-200 which had been maintained under his supervision, and for which he had signed an airworthiness release. The law judge modified the sanction from a 30-day suspension of respondent's mechanic certificate, as sought in the Administrator's complaint, to a 15-day suspension. For the reasons discussed below, the Administrator's appeal (seeking reinstatement of the section 43.13(a) charge) is granted and respondent's appeal (seeking dismissal of the section 43.16 charge) is denied. The 30-day

² These regulations provide as follows:

§ 43.16 Airworthiness Limitations.

Each person performing an inspection or other maintenance specified in an Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall perform the inspection or other maintenance in accordance with that section, or in accordance with the operations specifications approved by the Administrator under Parts 121, 123, 127, or 135, or an inspection program approved under § 91.409(e).

§43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16.

He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

suspension is reinstated.

The Administrator's complaint contained the following factual allegations:

2. On or about November 8, 1990, Delta Air Lines, Inc., operated civil aircraft N525DA, a Boeing 727-200, . . . on a flight departing the Tampa International Airport, Tampa, Florida.

3. After takeoff on the above-described flight, the static instruments . . . were erroneous and unreliable. The pilot-in-command declared an emergency and requested clearance to an airport with visual meteorological conditions.

4. Upon [the flight's] landing at the Orlando International Airport, Delta Air Lines, Inc., personnel reported finding the static ports located on both sides of [the aircraft] covered with an orange colored tape approximately twelve (12) inches in length. In addition, it was found that tape approximately eight (8) inches in length covered the equipment blower port located on the right side of [the aircraft] near the right side static ports.

5. The tape was covering the ports, . . . at the time [the flight] departed the Tampa International Airport.

6. Prior to [the flight's] departure from Tampa International Airport, . . . you performed maintenance on [the aircraft] and failed to correctly determine if [it] was airworthy thereby releasing [it] to service in an unairworthy condition.

7. You signed the Delta Air Lines, Inc., logbook of N525DA in the airworthiness release section indicating that all work had been accomplished on N525DA and that the aircraft was in an airworthy condition prior to the departure of [the flight].

8. Prior to [the flight's] departure from Tampa International Airport, . . . you failed to properly determine if all of the required maintenance had been accomplished and that [the aircraft] was in an airworthy condition.

9. Specific to paragraph eight (8) above, you failed to detect that said tape was covering the ports of [the aircraft].

It is undisputed that the aircraft at issue was unairworthy when it took off from Tampa, due to three pieces of bright orange tape which had been left over the static ports and equipment blower port, as described in the complaint. The tape had apparently been applied by "wash-rack" personnel who had washed the aircraft prior to, and in preparation for, a maintenance check for possible hydraulic leaks in the landing gear and flap wells. Although it is not clear from the record how much of the aircraft was actually washed, it is undisputed that only the gear area and flap wells needed to be washed in order to aid in the leak checks and that respondent knew at least those areas had been washed. Those areas are approximately 15 feet away from the ports which were later found to have been taped. The hydraulic leak checks, and several other items of maintenance, were completed by a team of Delta mechanics in the maintenance hangar and were supervised by respondent. Respondent then did a walkaround inspection of the aircraft, signed the airworthiness release in the aircraft logbook, and taxied the aircraft back to the line.

Two required inspections (one by line maintenance, and one by the flight engineer), which were supposed to have occurred after respondent returned the aircraft to the line, specifically provided for inspection of the static ports, and therefore should have revealed the presence of the tape. However, the line inspection (referred to in Delta's maintenance manuals as the "pre-departure walkaround inspection") was never done, despite

having been signed-off as completed by line maintenance personnel. The flight engineer admitted that he "obviously missed" the tape during his pre-flight inspection. At issue in this case is whether respondent, the lead hangar mechanic, also had a duty to discover the tape. We hold that he did.

The basis for the Administrator's position that respondent had a duty to discover the tape is twofold. First, the Administrator argues that by signing the airworthiness release section of the aircraft logbook, respondent was assuming responsibility for completing the pre-departure walkaround inspection, which specifically calls for inspection of, among other things, pitot-static covers. In support of this contention, which was apparently rejected by the law judge, the Administrator cites Delta's maintenance manual, Standard Practice 21.6. This provision describes the items to be inspected in a pre-departure inspection, and then states, ambiguously, "[a]dditional documentation of accomplishment is not required. The airworthiness release serves this purpose. The final or pre-departure walkaround is simply sound maintenance policy." (Emphasis added.) Respondent argues that the pre-departure walkaround is a line maintenance (as opposed to a hangar) responsibility, and that the cited manual provision does not make the pre-departure inspection a pre-requisite to signing the airworthiness release.

In the alternative, the Administrator argues that, even if respondent did not assume responsibility for the pre-departure

inspection described in Delta's Standard Practice 21.6, the orange tape covering the ports was such an obvious discrepancy that he nonetheless had a duty to discover it during his self-described "general" or "pre-taxi" walkaround inspection of the exterior of the aircraft. Because we agree with this second contention, we need not address the Administrator's first argument, which implicates potentially complex deference issues.³

Respondent concedes that the purpose of his required pre-taxi walkaround inspection was to detect external damage to the aircraft or other obvious conditions affecting the airworthiness of the aircraft. When he failed to notice the three pieces of tape covering the static ports and equipment blower port respondent failed to accomplish that purpose. In the words of the law judge, "I just can't imagine anything that's more obvious than a three inch wide, twelve inch piece of bright red tape stuck to the fuselage of an aircraft over the static port." (Tr. 220.) Even if, as respondent attempted to prove in his defense, there was no paperwork to alert him to the possible existence of

³ It is not clear to us whether the interpretation of an FAA-approved manual provision is the sort of FAA interpretation to which we owe deference under the FAA Civil Penalty Administrative Assessment Act of 1992 (P.L. 102-345 § 3, 106 Stat. 923 (1992)), which states that the Board "shall be bound by all validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration." Apart from that issue, we note also that the FAA's interpretation in this case is at odds with Delta's implementation of the provision, in that the pre-departure inspection has apparently been treated as a line maintenance responsibility, regardless of who signs the airworthiness release. Further, we note that the interpretation of Delta's manual provision was offered only by the FAA inspector who investigated this incident, and there was no testimony from Delta's principal maintenance inspector.

the tape, and despite the fact that several others⁴ may also have missed the tape, we are nonetheless convinced that it constituted an obvious and easily discoverable condition that respondent should have detected.

In light of the law judge's finding that respondent's deficient inspection violated section 43.16, we are puzzled by his dismissal of the section 43.13(a) charge on the basis that the aircraft wash did not qualify as "maintenance" within the meaning of that section. No such conclusion was necessary in order to affirm the violation. It is well-established that inspections are a form of maintenance which are also governed by section 43.13(a). Administrator v. Woods, 5 NTSB 1819 (1987). Having found that respondent's inspection was inadequate, he should have affirmed both violations. Since the law judge's reduction in sanction was based solely on his dismissal of one charge, and respondent does not argue that a lesser sanction is warranted for both violations, the 30-day suspension will be reinstated.

Finally, we note that the law judge's conclusion that respondent was responsible for discovering the tape was based in part on a letter from Delta's Senior Vice President for Technical Operations, outlining disciplinary actions taken against

⁴ It should be noted that the flight engineer conducted his walkaround inspection in darkness using a flashlight. Moreover, although the other mechanics working under respondent's supervision in the hangar may not have noticed the tape either, there is no indication that any of them conducted a walkaround inspection of the exterior of the aircraft specifically to detect discrepancies, as did respondent.

respondent as a result of this incident. Respondent was disciplined "for failure to remove the tape prior to signing the Maintenance Release." (Exhibit A-6.) The law judge noted that Delta proposed a larger suspension against respondent than against the two line mechanics, thereby indicating they thought he was "the most responsible" mechanic. (Tr. 219.)⁵ We need not rule on respondent's claim that the law judge's reliance on this letter was improper, as we would have reached the same result in this case even without it.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. Respondent's appeal is denied;
3. The complaint is affirmed in its entirety; and
4. The 30-day suspension of respondent's mechanic certificate shall commence 30 days after the service of this opinion and order.⁶

HALL, Chairman, FRANCIS, Vice Chairman, and HAMMERSCHMIDT, Member of the Board, concurred in the above opinion and order.

⁵ Although Delta's manager of technical standards testified that Delta had rescinded the disciplinary action against respondent (Tr. 188), the law judge questioned the credibility of this testimony (Tr. 217-19).

⁶ For the purpose of this opinion and order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).